

1901-049 Chancery Causes: B. F. Thompson vs. William Smyth &c  
Lee Co

Howard, Cole

1 Plat

CA-Estate Dispute  
T-Property



To the Hon. H. A. W. Sheen Judge of the  
Circuit Court for Lee County, Virginia.

Humbly Complaining, your orator B. F. Thompson  
would show to the court, that John Smyth  
was in his Life time seized and possessed  
of certain real estate lying in the County of Lee  
in the Brush Country, on what is commonly called  
the Big Hill, near the North Fork of Powell's  
River, and being so seized and possessed, the  
said John Smyth, on or about the day of  
18, died intestate leaving,

Children living, and sets of grand children,  
who became heirs to a part of the said John Smyth's  
estate. Among these children and grand children  
the real estate of the said John Smyth was  
partitioned, under a decree of your honors court,  
in the Chancery cause of vs

, and to the children of Jas  
Smyth, who was one of the deceased children of the  
said John Smyth, was assigned Lot No in  
said partition, which said lot of land is described  
in said partition aforesaid, a copy of which is herewith  
~~as follows, beginning, in the copy of said~~  
filed, marked "Partition", which is prayed to be  
read and treated as a part of this bill.

The children of the said Jas Smyth, were Wm  
Smyth, Joseph L. Smyth, Sarah Cole, nee Smyth,  
and Amanda Howard, nee Smyth, since the said  
partition of said lands, Amanda Howard has died  
leaving some several children all of whom are non-  
residents of this state and whose names are  
unknown to your orator, but is advised that they



1 are all infants; under the age of twenty one years  
2 Since said partition was made, your orator has  
3 purchased from the said Sarah Cole all her undivided  
4 one fourth interest in said Lot or parcel of land, ~~from~~  
5 which was assigned as aforesaid to the Children  
6 of the said Jas Smyth (deceased) and has received  
7 from her a deed of conveyance; a copy of which is  
8 herewith filed marked copy, and prays that the  
9 same may be read and treated as a part of this bill.

10 And your orator further states that the said lot-  
11 or parcel of land so assigned as aforesaid to the  
12 children of the said Jas Smyth, and which as  
13 herein before described is, as he believes, susceptible  
14 of partition among the parties entitled thereto; but  
15 if it cannot be so divided, then your orator desires  
16 that the same may be sold and the proceeds  
17 divided among the adult and infant parties  
18 according to their respective rights; the shares of  
19 the infants to be held as directed by the statute  
20 in such cases made and provided. Should such  
21 property not be divisible in kind, complainant  
22 believes, and here states, that the interests  
23 of those who are entitled to the said real estate,  
24 or its proceeds, will be promoted by a sale of the  
25 whole of the same.

26 For as much, therefore, as your orator is remedied  
27 <sup>in the premises</sup> ~~Save~~ by the aid of a court of equity, he prays that  
28 the said Mr. Smyth, Joseph D. Smyth, and the unknown  
29 children and heirs of Amanda Howard (deceased) may be  
30 made parties defendants to this bill and required to  
31 to answer the same, but not upon their oaths, that being  
32 waived, the said adults in their own proper



persons, and the infants by guardian ad litem;  
that a proper guardian ad litem be appointed  
be appointed in this cause for said infants who  
shall also answer this bill; that proper process  
issue; that the said real estate be divided among  
the parties entitled thereto, that your orators share  
be assigned him, adjoining his other lands, if the same  
can be done without material injury to the rights of  
the other parties in interest; that if said lands are not  
susceptible of division in kind, that the same be  
sold and the proceeds divided; that all proper  
orders and decrees may be made, accounts taken  
and enquiries directed; and that all such other,  
and further ~~relief~~ and general relief as in  
the premises may be just and right may be granted.  
And your orator will ever pray etc,

J. C. Noel J. C.



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Plffs Costs

Clerk 8.79

Tax 1.50

Shff 1.50

attly 15.00

Printer 5.00

Dixon 4.00

Trill 4.00

Liton 4.00

Co Clerk 3.00

\$46.79

Guard adffem 5.00

\$51.79

B. F. Thompson

vs. Bill in Chancery

Wm. Smyth et al.

1901. 1st May rules bill  
filed Order Publication  
+ Contd

2nd May rules O.P.  
Completed Cause  
set for hearing.

~~~~~



The joint answer of the Children of Amanda Howard deceased all of whom are infants under the age of twenty one years, by H. O. Ballou, their guardian ad litem, assigned to defend them in this suit, to a bill of complaint exhibited against them and others, in the Circuit Court ~~of~~ for Lee County, by B. H. Thompson.

The respondents reserving to themselves the benefit of all just exceptions to said bill, for answer thereto, or to so much thereof as they are advised that it is material they should answer, by their guardian ad litem, answers and say:

That they are infants of tender years, and by reason of their infancy, are incapable of understanding, or of taking care of their rights and interests. They, therefore, by their said guardian commend themselves and their rights and interests to the protection of the Court; and pray that no decree may be pronounced which will tend to their prejudice.

And having fully answered, the said respondents pray to be hence dismissed with their reasonable costs in this behalf expended, and they will ever pray etc,

H. O. Ballou

Guardian ad litem for  
the Children of Amanda Howard Deed.

Sworn to before me, This June 5<sup>th</sup> 1901

A. B. Munsey Clerk



B. F. Thompson  
vs { de Chereury  
Wm. Smyth et al  
Answer of defendant  
by guardian ad litem  
Filed June 5th 1901  
A. B. Munsey Clerk



B. F. Thompson  
vs  
Wm. Smyth & al } in Chancery.

This cause came on again to be heard this 8 day of Nov., 1901, upon the papers formerly read in the cause, and the report of H. P. Dixon, L. B. Trill and Frank Litter commissioners appointed by a decree of this court entered in said cause on the 6 day of June 1901 to partition the tract of land mentioned in the complainant's bill and proceedings, and was argued by counsel. And it appearing that said report is unaccepted to, it is therefore adjudged, ordered and decreed that the said report be and is approved, adopted and confirmed, and that said report, <sup>and plat filed therewith</sup> be recorded in the clerk's office of the county court of said county ~~in the deed book~~ as a deed is recorded, and that the same have the effect and force of a deed conveying and vesting ~~to~~ in the parties thereto <sup>to</sup> title, the shares of said land therein assigned, ~~to~~ respectively assigned and described. It is further adjudged ordered and decreed that said plaintiff recover of said defendants three fourths of his cost in this cause expended, including an attorneys fee of \$10.00; that is to say that he recover of the said Wm. Smyth one fourth of said costs, and that he recover of Joseph L. Smyth one fourth of said costs, and from the heirs of Amanda Howard (deceased) one



B. F. Thompson  
vs. Decree final

W. Smyth et al

Entered on 10th Nov 7 Page 13

Entered this day of  
Nov. 1901

H. A. W. St. George  
Judge

fourth of said costs; and that the plaintiffs  
said judgment for said costs be a lien  
on the said lands of said defendants respectively.

And this cause is ordered to be stricken  
from the docket; with the right reserved  
to the plaintiff, to have the same reinstated  
at any time, for the purpose of enforcing  
his lien of judgment for costs enforced against  
said lands.



B. F. Thompson Plff.

vs

W. M. Prugh et al Defts.

} Dr. Chancery

This cause came on this day to be heard upon the plaintiff bill, and upon motion of the said plaintiff it is adjudged ordered and decreed that the said bill be dismissed, the plaintiff paying his own costs. And this cause is stricken from the docket.



B. F. Thompson  
vs. Deere  
W. M. Pugh et al. Deft.

Entered on lch by O.B.  
No 7 Page 31

Entered This  
Nov 14, 1901.  
H. C. W. Skenn

Judge



B. H. Thompson  
vs  
W<sup>m</sup> Smyth et al } in Chancery.

This Cause came this day to be heard upon the plaintiffs bill and the exhibits filed therewith, and was argued by counsel; and it appearing to the Court that the adult defendants W<sup>m</sup>. Smyth and Joseph G. Smyth and the children of Amanda Howard (decd.) ~~have all been served by~~ are all non residents, and have been given proper notice by publication as required by <sup>the</sup> statute in such cases made and provided, and the said W<sup>m</sup>. Smyth and Joseph G. Smyth have not appeared and demurred or answered to said bill, the same is taken ~~as~~ confessed as to them; and it further appearing to the Court that the children of Amanda Howard (deceased) are all infants whose names are not known to the Court; it is therefore adjudged ordered and decreed that H. C. Ballou, who is hereby appointed as guardian ~~ad litem~~ for said children, will answer for them <sup>as their</sup> ~~by the name~~ guardian ad litem, and permission is hereby granted said guardian ad litem to file his said answer for said children. Upon consideration of all which it is adjudged ordered, and decreed that said land assigned to the heirs of James Smyth in the portion of the lands of John Smyth mentioned in complainant's bill, be partitioned into four equal shares or parts, and assigned to those entitled thereto. It is further, adjudged, ordered and decreed that H. P. Dixon, Charles Pitt, and



Frank Linton, who are hereby appointed  
 Commissioners, for the purpose, will go upon  
 said lands and divide the same into four or  
 nearly equal parts as possible, taking into  
 consideration, timber, quality of soil, and situation,  
 and assign the same to those entitled thereto;  
 one of said parts they will assign to B. F.  
 Thompson, one to W. H. Smyth, one to Joseph G.  
 Smyth, and one to the children of Amanda  
 Howard deceased. The share to be laid off to  
 B. F. Thompson, with said Commissioners will  
 lay off adjoining the lands already owned  
 by said Thompson if the same can be done  
 without material injury to the rights of the  
 other parties in interest. Said Commissioners  
 will report their action to Court, and this  
 Cause is continued.

H. A. W. Smith  
 1901  
 London & Co. Supt

B. F. Thompson  
 of Boone  
 Mr. Smyth & Co.  
 ordered out by  
 O. B. No. 6. 1893  
 629



Virginia

At a circuit court continued<sup>and</sup> held for  
Lee County at the Court-house thereof on  
Wednesday June 5<sup>th</sup> 1901.

B. F. Thompson

Plff

vs

W<sup>m</sup> Smyth et al

Defts

} In Chy.

This cause came on this day to  
be heard upon the plaintiffs bill<sup>and</sup> the  
exhibits<sup>filed</sup> therewith<sup>and</sup> was argued  
by counsel. And it appearing to the court  
that the adult defendants W. M. Smyth<sup>and</sup>  
Joseph L. Smyth and the children of  
Amanda Howard (decd) are all now  
residents and have been given proper no-  
tice by publication as required by the statute  
in such cases made<sup>and</sup> provided that the  
said W<sup>m</sup> Smyth<sup>and</sup> Joseph L. Smyth have  
not appeared<sup>and</sup> demurred or answered  
to said bill; the same is taken for  
confessed as to them; and it further  
appearing to the court that the children  
of Amanda Howard (deceased) are also  
infants whose names are not known to  
the court it is therefore adjudged<sup>and</sup> ordered  
decreed that H. O. Ballou who is here  
by appointed as guardian ad litem  
for said children will answer for them  
and permission is hereby given said



guardian as litem to file his answer for said children. Upon consideration of all which it is adjudged ordered <sup>and</sup> decreed that said land assigned to the heirs of James Smyth in the portion of the lands of John Smyth mentioned in Complain auto bill be partitioned into four equal shares or parts <sup>and</sup> assigned to those entitled thereto. It is further adjudged ordered <sup>and</sup> decreed that H. F. Dixon, Charles Trill and Frank Litton who are hereby appointed Commissioners for the purpose will go upon said lands and divide the same into four as nearly equal parts as possible one of said parts they will assign to B. F. Thompson one to Wm Smyth one to Joseph L. Smyth and one to the children of Amanda Howard deceased. The share to be laid off to B. F. Thompson said Commissioners will lay off adjoining the lands already owned by said Thompson if the same can be done without material injury to the rights of the other parties in interest. Said Commissioners will report their action to court. And this cause is continued

A Copy

Teste; A. B. Munsey Clerk



B. F. Thompson

5 } Copies of Decree

M<sup>rs</sup> Smyth et al

Executed Only

the 22 1861 by

Delivering a true  
copy of the within

to H. P. Dixon

on to Chas Litt

and Frank Littor

J. P. Bly 23

for W. J. White

Copies for

H. P. Dixon

Charles Litt &

Frank Littor



To the Hon H. A. W. Shreve Judge  
of the Circuit Court for Lee Co.  
B. F. Thompson

vs  
William Smyth et al

Pursuant to a decretal ordered in the  
above styled Cause, on the 5<sup>th</sup> day of June 1901,  
your undersigned commissioners who  
were appointed by said decree, for the purpose  
~~and~~ went upon the land in controversy  
and apportioned said lands among those  
entitled to the same in the following manner,  
taking into consideration timber, quality of soil  
and situation, as follows to wit:

We divided the said lands into four  
parts, which will be seen by reference  
to the plat herewith filed marked "Plat;"  
as a part of this report; some of the  
lands were cleared, others parts in timber  
the public road divides what lands are  
cleared from the main portion of the  
timbered lands. To B. F. Thompson who had  
lands adjoining the timbered lands, and  
on the same side of the public road, we  
assigned lot No. 1, marked on the plat of said  
in blue, and containing about four acres and  
bounded as follows: Beginning at a stake,  
<sup>and marked "A" on said plat</sup>  
corner to said Thompsons Pugh land, thence S 58°  
W 15 poles and 12 links, to a stake, S 34 E. 47 poles to  
a poplar on the South line, marked on said plat "P";  
Thence N 56 1/2 E 14 poles and 15 links to a stake, marked



"M" on said plat; thence N  $34\frac{1}{2}$  W 44 poles to the Beginning. Lot No 2. containing 4 acres and 20 sq poles, <sup>we assigned</sup> to William Smyth. Same is colored red on said plat; and bounded as follows: Beginning. At a stake at public road corner to Lot No 1. and marked "B" on said "Plat"; thence with the western line of Lot No 1, S  $33\frac{1}{2}$  E. 47 poles to a stake on south line, at "B" on said plat; thence with said South line, S  $56\frac{1}{2}$  W 15 poles and 10 links, to a stake, and marked "C" on said plat; thence N  $34$  W 47 poles to a stake at public road, at "D" on said plat; thence N  $55$  E. with public road,  $14\frac{1}{2}$  poles to the beginning. Lot No 3, colored brown on said plat. containing 7 acres and 58 sq poles, we assigned to Jas. L. Smyth. which said land is bounded as follows: Beginning at a stake on the North edge of the public road. at Littles and Pughs corner. Marked "A" on said plat; thence with the said road S.  $73\frac{1}{2}$  W. 9 poles to a stake in the said road. Thence S  $65\frac{1}{2}$  W 16 poles to corner lot No 1, marked "A" on said plat; and with line of lot No 1 S.  $58$  W. 15 poles & 12 links to "B." corner of lot No 2, and with the line of same S  $55$  W.  $14\frac{1}{2}$  poles. to "D" corner to lot No 2, thence S  $33\frac{1}{2}$  E. 47 poles to South line at "C", corner of lot No 2; thence S  $56\frac{1}{2}$  W. 2 poles to stake corner to J. M. Smyth's



land marked 'f' on said plat; thence N 42½  
W 54 poles to a stake to ~~plate~~ at 'P' on said  
plat; thence N 50 E. 70 poles to a stake at 'H'  
on said plat on Pugh's line. thence S 20 E.  
23 poles to the beginning. Lot No 4, marked  
green on plat, containing 10¾ acres, was  
assigned to the heirs of Amanda Howard  
(deceased) which said lot is bounded  
as follows; Beginning at a rock, ea to  
Pugh's land, marked on said plat 'y'; thence  
S 52½ W. 77 poles to a rock at public road  
marked 'K' on said plat; thence S 42½ E.  
24 poles, to a stake corner to lot No 3, marked  
'Q' on plat; thence S 0 E. 70 poles to a stake  
on Pugh's line at 'H' on said plat; thence N 20  
W. 23 poles to the beginning.

We think the above is as nearly  
equal division of said land as could  
possibly be made of said land, giving  
to each share timber.

All of which is respectively submitted  
this 21 day of Oct: 1901.

H. P. Dixon.  
C. B. Fritz  
Frank Litton.



Pffs Costs  
Clerk 8.39  
Tax 1.50

B. F. Thompson

vs

Wm Smith et al

Filed Oct 21st 1901

A B Munsey clerk

Cast.

A. P. Dixon 4.00

C. B. Fitt 4.00

Frank Litton 4.00

\$12.00



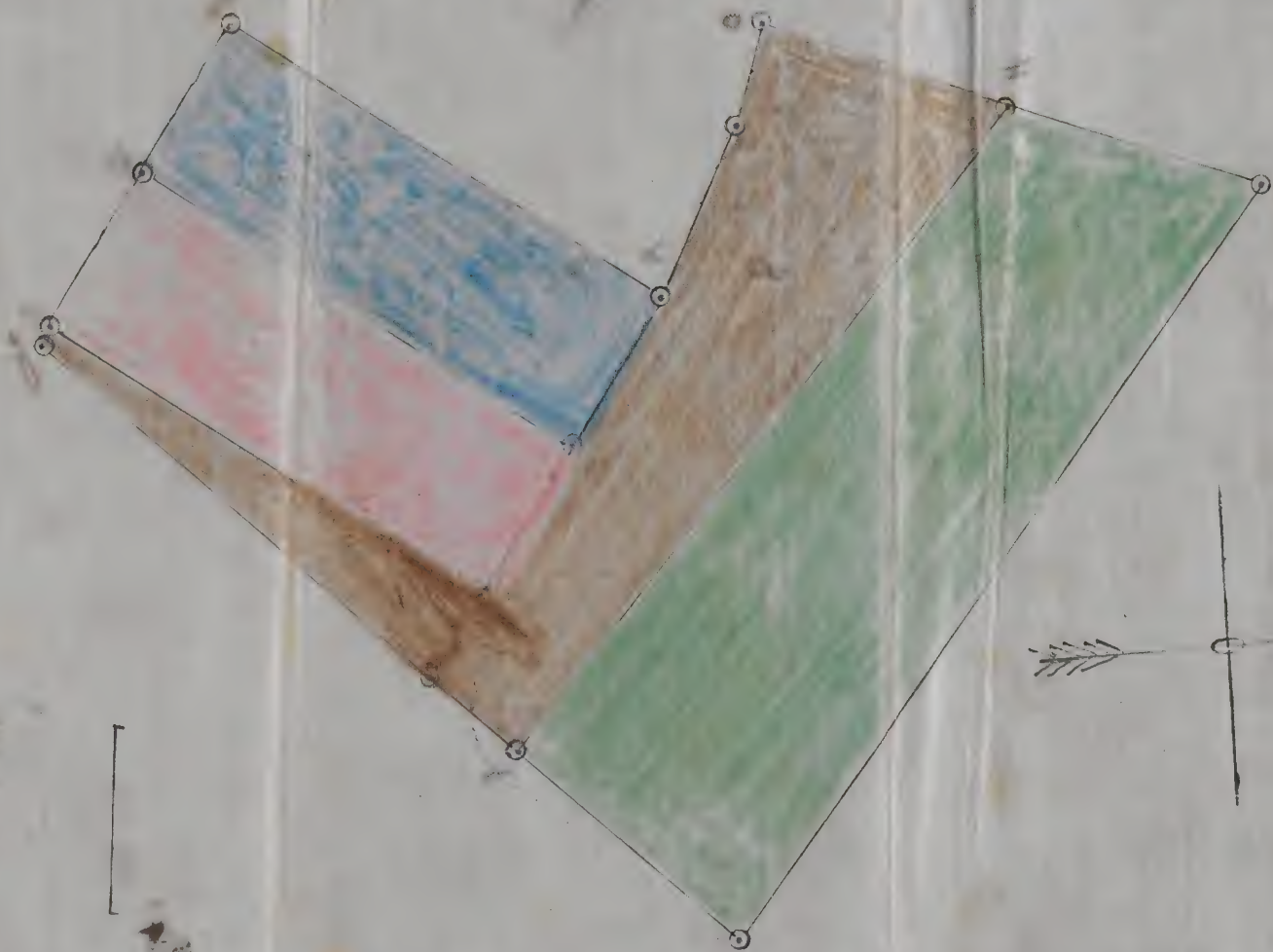
PLAT

0



Partition of Jim Smyth Est.  
Sept 1901







In the Clerk's Office of the Circuit Court of the County of  
*Lee* on the *16<sup>th</sup>* day of *April* 1901 ~~189~~.

*B. F. Thompson* Plaintiff  
against

*M<sup>r</sup> Smyth, Joseph L. Smyth, and the unknown  
Children and heirs of Amanda Howard* Defendant

The object of this suit is to *partition the lands of which James Smyth  
inherited in the estate of John Smyth deceased in Lee County,  
Va., among those entitled to the same*

And an affidavit having been made and filed that the defendant *M<sup>r</sup> Smyth, Joseph L. Smyth  
and the unknown Children and heirs of Amanda Howard*, are  
not residents of the State of Virginia, it is ordered that *they* do appear here within *fifteen* days  
after due publication hereof, and do what may be necessary to protect *their* interest in this suit. And  
it is further ordered that a copy hereof, be published once a week for four weeks in the *Birmingham  
Gap News*, and that a copy be posted at the front door of the court-house of this *County*  
on the first day of the next term of the ~~Circuit~~ Court.

A copy—Teste:

*J. L. Noel* p. q.

*A. B. Munsey* Clerk.



B. F. Thompson

vs. }

ORDER OF  
PUBLICATION.

Wm Smyth et al

Virginia Lee County  
to-wit: A. A. B. Munsey  
Clerk of the Circuit Court  
of Lee County, Virginia  
do hereby certify that I  
posted a copy of the  
within at the front  
door of the Court house  
of said County on the  
first day of May Term  
of County Court.

Gives under my  
hand this 27th day  
May 1901.

A. A. B. Munsey Clerk



In the Clerk's Office of the Circuit Court of the County of  
Lee

B. F. Thompson  
against

Plaintiff ,

In Chancery

M<sup>rs</sup> Smyth, Joseph L. Smyth and the unknown  
heirs of Amanda Howard

Defendant & .

This day J. L. Noel personally appeared  
before me A. B. Munsey Clerk of the said Court,

and being duly sworn, made oath that M<sup>rs</sup> Smyth, Joseph L. Smyth and  
the unknown children & heirs of Amanda Howard  
defendant in the said suit are not residents of the State of Virginia,

Given under my hand as Clerk of the said Court, this 16<sup>th</sup> day of April 1901.

A. B. Munsey Clerk



B. F. Thompson

vs.

}

AFFIDAVIT FOR ORDER  
OF  
PUBLICATION.

Wm Smyth et als

J. L. Noel p. q.

Filed April 16th 1901  
A. B. Muncey Clerk



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## Order of Publication.

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In the Clerks office of the Circuit Court for the County of Lee, on the 16th day of April, 1901.

B. F. Thompson, VS. Wm. Smyth, Joseph Smyth and the unknown children and heirs of Amanda Howard in Chancery.

The object of this suit is to partition the lands of which James Smyth inherited in the estate of John Smyth deceased in Lee county, Va., among those entitled to same. And an affidavit having been made and filed that the defendants, Wm. Smyth, Joseph L. Smyth and the unknown children and heirs of Amanda Howard, are not residents of the state of Va., it is ordered that they do appear here within fifteen days after due publication hereof and do what may be necessary to protect their interests in this suit; and it is further ordered that a copy hereof be published once a week for four weeks in the Pennington Gap News and that a copy thereof be posted at the front door of the court house of this county on the first day of the next term of the County Court for said county.

A copy,—Teste:      A. B. Muncy, Clerk.  
J. C. Noel, P. Q.

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Pennington Gap, Va., ..... 190

B. F. Thompson  
vs. Smith & others

This is to certify that the  
within notice in above style was  
was published four <sup>consecutive</sup> weeks in  
the Pennington Gap News, beginning  
April 19th and ending May 10th 1901  
this June 4th 1901

W. H. Hopkins Editor  
Pennington Gap News